Project Delivery Academy Module 3: Design and Clearances

Right of Way

Presentation by

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Manager, Right of Way Project Management

September 16, 2020



Module 3: Design and Clearances ADOT Right of Way Group

Infrastructure Delivery Operations (IDO) Section Engineering Building 205 S. 17th Ave. Phoenix, AZ (3rd Floor)

What we do!

- We provide the <u>Right of Way Clearance</u> required before you can receive approval to advertise, award & construct your project
- We in essence are your: Right of Way Engineer, Title Company,
 Realtor and Property Manager



Module 3: Design and Clearances ADOT Right of Way Group

- Adhere To All Federal & State Acquisition & Relocation Requirements
- Acquisition of Real Property Rights Required For Projects
- (Who) Legal Title Ownership and Conveying Instruments
- (Where) Establish existing Right of Way (R/W) R/W Survey
- R/W Engineering Plans and Legal Descriptions
- Appraisals Fair Market Value For Required Acquisitions & Damages
- One On One Offer & Negotiations With Owners & Escrow Closings
- Work With Attorney General's Office for Condemnations Relocate Owners Impacted By Projects
- Accounting, Contracts, Records Property Records Center, Title & R/W Archives
 Field Identify R/W Before Construction
- Monument R/W After Construction
- Prepare R/W Resolutions For State Transportation Board Approval
- Property Management For ADOT Owned Excess Land Rentals, Disposals, Demolition And Water Rights & Wells
- Federal (FHWA) Delegated R/W Oversight Responsibilities For Local Public Agency Transportation Projects
- Red Letter Program Interface With Local Jurisdictions, Developers, Attorneys, Architects, Engineers, Utility Companies







Goal:

Increase your understanding about a critical component that can destroy the success of your project(s).



Context Sensitivity

Thinking Beyond The Pavement



Quick Trip

Journey

From

"Don't Get It" (or wherever you are)

to

"Got it!"



TEST

There will be a <u>TEST</u> at the end of the presentation.



RIGHT-OF-WAY

Not Right Away!



RIGHT-OF-WAY

Right of Way is not an event





Right of way is a linear sequential process that requires. TIME!



Basic Question

Q. 3 Clearances <u>required</u> to advertise your project:

EnvironmentalRight of Way

Utilities and Railroad

(Materials Memo – No interrelationship with R/W)

(Any relationship to the order?)



FHWA Environmental NEPA Clearance is critical to Right of Way.

Without NEPA Clearance = no AZPR2X for R/W

Without NEPA Clearance and AZPR2X =

R/W <u>cannot initiate negotiations</u> for property acquisitions.

R/W <u>cannot Submit to Government Agencies</u> to begin their submittal process. (some take 1 yr.)



FEDERAL HIGHWAY ADMINISTRATION - ARIZONA DIVISION OFFICE				LETTER OF AUTHORIZATION AND PROJECT AGREEMENT			
ARIZONA DEPARTMENT OF TRANSPORTATION				Authorization		Modified Project Agreemen	
"In accordance with ADOT/FHWA operating partnership"				Il comply with the agreement pro utes the making of the certificate # 098416667	visions set forth i	Grant Agreement reder tunds obligated, it accepts n 23 CFR 630.112; and its signature	
FEDERAL AID PROJECT NO. SUFFIX		SUFFIX	TRACS NO.(ADOT)			COUNTY	
DATE AUTHORIZAT				FMIS DAT	ΓE		
GENERAL LOCATIO							
GENERAL DESCRIP	TION OF WORK					*	
YOU ARE AUTHORIZ	ED TO PROCEED WITH T	HE WORK CHECKED BE	LOW:				
PHASE I PRELIMIN	IARY ENGINEERING - Scoping	g, Location]	CONSTRUCTION - Adve	rtise for Receip	ot of Bids	
Studies, Environme PHASE II PRELIMII Design/Preparation ACQUISITION OF I		esign]	CONSTRUCTION - Proce Force Account Basis OTHER -	ced on an Agre	ed Price and/or	
FUNDING	TOTAL ESTIMATED PROJECT COST(\$)	FEDERAL PARTICIPATION AMOUNT(\$)	Т	FEDERAL FUNDS(\$)	APPN CODE	RATIO(%)	
PREVIOUS AUTHORIZATIONS:	\$0	\$0.00				0,00%	
THIS AUTHORIZATION	\$0	\$0.00	T			94.30%	
PROJECT TOTALS	\$0	\$0.00		\$0.00			
OTHER (SPECIFY)							
	nt is subject to the fo	•		V.=16			
	et.access.gpo.gov/20			nd			
http://edock	et.access.gpo.gov/20	10/pat/2010-22/06.	par				
THE WORK AUT	HORIZED UNDER THIS P	ROJECT WILL BE HANDL	ED TH	IROUGH			
	**************************************	***************************************					
				Authorization			
A Requested by							
D Prepared by				for Division Administrator		MICHAEL MANAGEMENT AND	
0		w		Agreement			
T Authorized by		Date		A. g. wallialle			
Deputy Chief Fina	ancial Officer		by	for Division Administrator			
	ed by EHIMA for use by ADOT						



PM's Responsibility

Notify Right of Way when Federal Authorization is received to enable Right of Way to charge to a project and proceed.

OBTAINING FUNDING is key to our **SUCCESS** -

No Authorization to Proceed for R/W

+ No \$\$\$ to initiate on-call contracts

No Progress (possibly 60 to 75 days)



Right-of-Way Does NOT



Determine The Location (footprint/requirements) where the new Right of Way Line needs to be to construct, operate, maintain and protect the public and our highway facilities. (You/Designer tell us what you need and we go get it for you.)



Right-of-Way Does NOT



Make up the market value for property at a project. It's not some Arbitrary Number-By LAW we have to pay the fair market value for a property. (If R/W cost is too much for your project budget – buy less by finding a solution that requires less.)



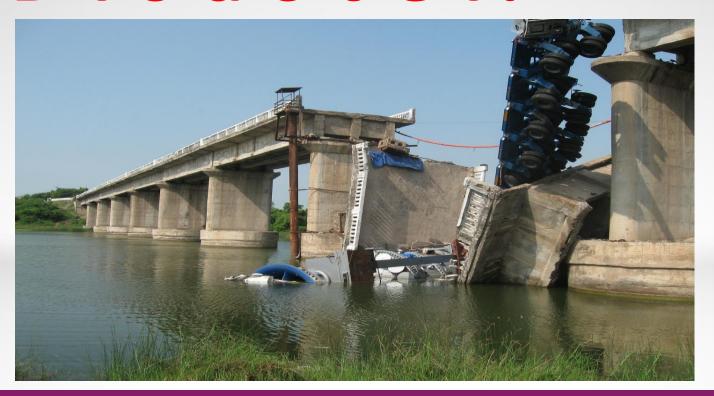
LAWS

- Laws of Physics
- Laws for Mechanics of Materials
- What happens when you violate the laws of physics or strength of materials?

Can you spell...



D-i-s-a-s-t-e-r!



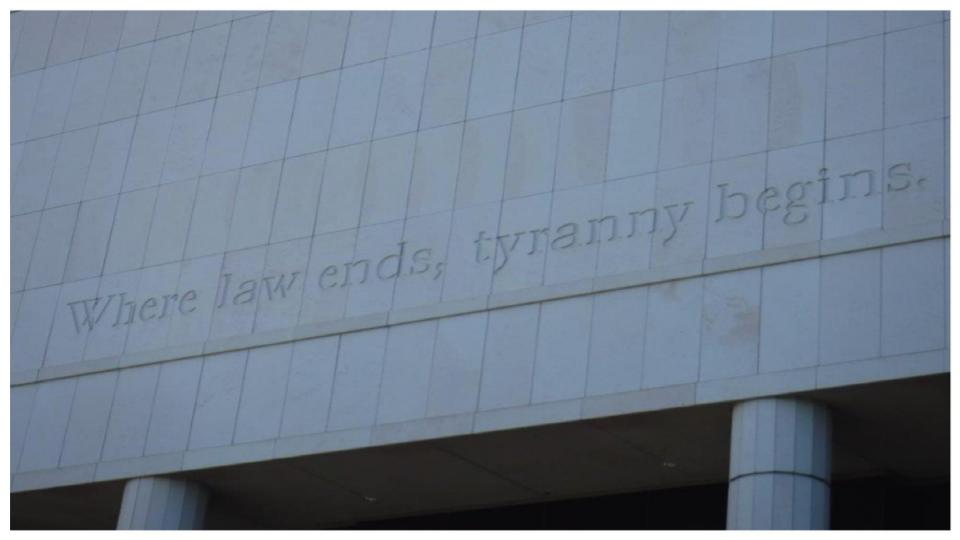


RIGHT-OF-WAY

<u>LAWS</u>







Cite as: 582 U.S ____(2017)

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions. Supreme Court of the United States. Washington D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 15-214

JOSEPH P. MURR, ET AL., PETITIONERS v. WISCONSIN, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF WISCONSIN, DISTRICT III

(June 23, 2017)

JUSTICE KENNEDY delivered the opinion of the Court.

The classic example of a property taking by the government is when the property has been occupied or otherwise seized. In the case now before the Court, petitioners contend that governmental entities took their real property – an undeveloped residential lot – not by some physical occupation but instead by enacting burdensome regulations that forbid its improvement or separate sale because it is classified as substandard in size. The relevant governmental entities are the respondents.

Against the background justifications for the challenged restrictions, respondents contend there is no regulatory taking because petitioners own an adjacent lot. The regulations, in effecting a merger of the property, permit the continued residential use of the property including for a single improvement to extend over both lots. This retained right of the landowner, respondents urge, is of sufficient offsetting value that the regulation is not severe enough to be a regulatory taking. To resolve the issue whether the landowners can insist on confining the analysis just to the lot in question, without regard to their



MURR v. WISCONSIN

Opinion of the Court

acter of the governmental action. Palazzolo, supra, at 617 (citing Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978)).

By declaring that the denial of all economically beneficial use of land constitutes a regulatory taking, Lucas stated what is called a "categorical" rule. See 505 U.S., at 1015. Even in Lucas, however, the Court included a caveat recognizing the relevance of state law and land-use customs: The complete deprivation of use will not require compensation if the challenged limitations "inhere . . . In the restrictions that background principles of the State's law of property and nuisance already placed upon land ownership." Id., at 1029; see also id., at 1030-1031 (listing factors for courts to consider in making this determination).

A central dynamic of the Court's regulatory takings jurisprudence, then, is its flexibility. This has been and remains a means to reconcile two competing objectives central to regulatory takings doctrine. One is the individual's right to retain the interests and exercise the freedoms at the core of private property ownership. Cf. id., at 1028 ("[T]he notion . . . That title is somehow held subject to the 'implied limitation' that the State may subsequently eliminate all economically valuable use is inconsistent with the historical compact recorded in the Takings Clause that has become part of our constitutional culture"). Property rights are necessary to preserve freedom, for property ownership empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.

The other persisting interest is the government's well-established power to adjus[t] rights for the public good." Andrus v. Allard, 444 U.S. 51, 65 (1979). As Justice Holmes declared, "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the



PROPERTY / LAND

Is Sacred Ground



RIGHT OF WAY

Is No Exception

With more laws, rules, regulations, guidelines, policies then can possibly be imagined.



Constitution and the Bill of Rights



Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



Article. XIV.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.



The Uniform Act

Note: These Regulations and Statutes were printed in June 2001. You should check our website: http://www.fhwa.dot.gov/legsregs/legislat.html for the most current copy of the regulations and statutes.

1Public Law 91-646 91st Congress, S. 1 January 2, 1971

(2As amended by Public Law 100-17, Apr. 2, 1987, Title IV, Uniform Relocation Act Amendments of 1987.) (3As amended by Public Law 102-240, Dec. 18, 1991, Sec. 1055, Relocation Assistance Regulations Relating to the Rural Electrification Administration.) (4As amended by Public Law 105-117, Nov 21, 1997, Sec. 104; Sec 2, an Alien not lawfully present in the United States.)

> Office of Real Estate Services Federal Highway Administration

AN ACT

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970".

TITLE I-GENERAL PROVISIONS

SEC. 101. As used in this Act-

- (1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.
- (2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.
- 3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.



Tuesday, January 4, 2005

Part V

Department of Transportation

Federal Highway Administration

49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs; Final Rule





25 CFR 169 Rights-of-Way over Indian Lands



Department of the Interior Bureau of Indian Affairs March 2019





Rights-of-Way over Indian Lands

▶ If a project with new right of way crosses over Tribal Reservation Land, approval is required from the BIA and the Tribe.





FEDERAL REGISTER

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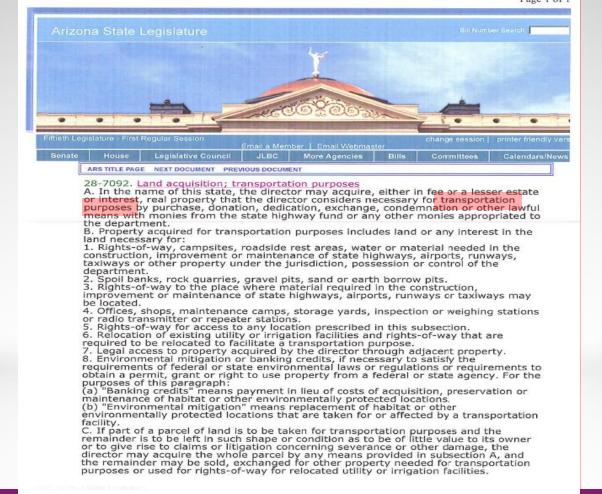
Part III

Department of Transportation

Federal Highway Administration

23 CFR Parts 635, 710, and 810 Right-of-Way and Real Estate; Final Rule







Stewardship and Oversight Agreement for Arizona

Introduction

Guiding Legislation

This Agreement outlines the roles and responsibilities of both the Federal Highway Administration (FHWA) Arizona Division and the Arizona Department of Transportation (ADOT) in the oversight and administration of the federal-aid highway program (FAHP) in Arizona.

Since 1991, federal transportation legislation has provided flexibility in delegating certain FAHP program and project-level responsibilities to states. The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the Transportation Equity Act for the 21st Century (TEA-21) of 1998. and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA LU) of 2005 provided flexibility to FHWA and the states in ensuring project actions are carried out in accordance with applicable laws, regulations, and policies. TEA-21, Section 1305 (a), required that FHWA and the state enter into an agreement showing the extent of the state's assumption of responsibilities of the Secretary of Transportation. These laws allowed the states to assume greater program and project responsibilities, and accountability in the management of the FAHP. With the passage of SAFETEA-LU, greater flexibility was granted for FHWA and the states to enter into a more comprehensive agreement that covers all aspects of the FAHP and mechanisms to effectively and efficiently execute the federal-aid program relating to program and project delivery, including financial integrity.

Pursuant to 23 USC 106(c), only certain project-level actions and authorities, as further defined in this Agreement, can be delegated; these involve; design, plans, specifications, estimates, contract awards, and inspections of projects. However, actions under the following non-Title 23 authorities cannot be delegated: National Environmental Policy Act (excepted as permitted under Title 23); Uniform Relocation Assistance & Real Property Acquisitions Act: and Clean Air Act. Also, the non-Title 23 requirements apply to all projects. In those situations where ADOT has assumed responsibility for project oversight through the delegations provided in Title 23 USC 106, ADOT is responsible acting in the relative role of FHWA. While federal law allows a state to assume certain project responsibilities, FHWA is ultimately accountable for assuring that the FAHP is delivered consistent with established requirements. Delegation authority to the state can be withdrawn at anytime if the state operates in a manner which violates federal laws or regulations.

23 USC 106(b) also permits states to approve, on a project-by-project basis, plans, specifications, and estimates for projects to resurface, restore, and rehabilitate highways on the National Highway System (NHS), and further permits the states to request that the Secretary no longer review and approve highway projects on the NHS (including the Interstate) with an estimated construction cost of less than \$1,000,000.

FHWA recognizes there are some projects on the Interstate System that are routine and inherently low risk that are generally non-controversial and in which the state DOTs have a high-level of experience and documented procedures and processes in place for ensuring compliance with federal requirements.

It is also mutually desirable for the FHWA to streamline the approval process of these routine and inherently low-risk projects. For that reason, the FHWA issued guidance on February 22, 2007, that allows for evaluation and revision of the \$ 1,000,000 threshold and the shifting of responsibilities to the states for inherently low-risk projects on the Interstate.

Accordingly, this Agreement incorporates, by programmatic agreement, inherently low-risk projects on the Interstate System on the basis of the following:

1. Inherently low-risk oversight projects include those that are routine, low-risk projects and generally non-controversial in which the state DOTs have a high-level of experience and documented procedures and processes in place for ensuring compliance with federal requirements. These projects would not include complex or unique engineering features. would not traditionally involve major changes in scope or cost, would satisfy design



Arizona of Transportation Infrastructure Delivery and Operations Division

Right of Way Procedures Manual



PROJECT MANAGEMENT SECTION UNIT 4950

FHWA Certified: January 01, 2016



FUNDEMENTAL POWERS OF THE STATE

Police Power Eminent Domain Taxation



Eminent Domain

The power of government to take private property and convert it into public use, with the payment of compensation.



TAKE

- 1. To get into one's possession by force
 - a. To capture physically; seize; take on enemy fortress
 - b. To seize with authority; confiscate
 - c. To kill, snare, or trap (fish or game for example)

EMINENT DOMAIN ACQUISITION = "TAKING"



Property – Bundle of Rights

Ownership
Quiet Possession
Use



Ownership

The right to sell, buy, bequeath, give, exchange, lease (in whole or part), split, transfer (in whole or fractional interests.



Quiet Possession

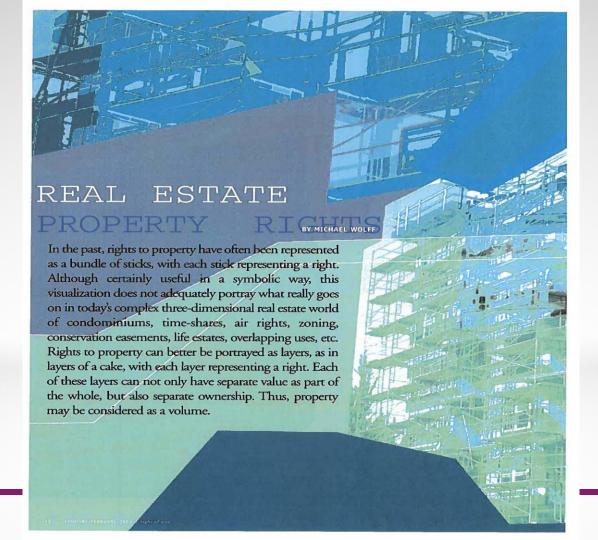
The right to possess property free of interference or encroachment from others, without due process of law and just compensation.



Use

The right of an Owner to use his property as he sees fit within the constraints of law, custom, and contracts.







Valuation Considerations and Issues

Easements ■ Rights from other properties on it ■ Rights into an adjoining property - Utility Easements through the property - Mineral and Water Rights - Air Rights - Zoning/Construction Rights or Restrictions, Limitations, or Rights Imposed by Government • Views • Visibility - Set Backs - Deed Restrictions - HOA and Common Areas, Requirements - Conservation Easements - Leasehold Interests - Time Limitations (leases, rentals, life estates, time shares) ■ Tax Liens and Certificates of Purchase - Federal Land Transfers - Access ...



IMPACT?

Impacts have consequences!

Time & Money



Best Practices:

- Avoid (creating the damage)
- Do the <u>minimal</u> amount of damage (amount often does not have a direct correlation to the amount of time required to obtain owners approval or acquire the interest required)

Will require compensation for damages, mitigation, or possibly a land exchange.



THE GOLD RULE

HE WHO HAS THE GOLD RULES.



REMEMBER

(The Golden Rule)

When FEDERAL provides the GOLD...

FEDERAL Provides The RULES!



Question

Q.Are you working on a project that is funded by Federal-Aid?

Remember \$1.00 of Federal Money in your project anywhere "federalizes" your project...and if you want to keep the Federal Money you must play by all the Federal Rules...everywhere.



Question

Q. What could be one of the worst <u>financial</u> <u>consequences</u> (nightmare) that can happen to you and your project?

...Lose the federal funding



Have you ever?

Seen the FHWA Presentation by Dave Leighow FHWA Realty Specialist, Salem, OR.

titled: "50 Ways to Lose Your Money"

...it's all about right-of-way



Question

Q. Ever been responsible for a project when the Feds pulled over \$40 Million from your project?

"A call like that would go straight to the Governor's Office."

(The storm rolls downhill.)

Gov. D. Ducey

J. Halikowski

D. Hammit

S. Boschen

S. O'Brien/PM



Solution?

Don't ask us to break the law (rules)

Please know-

We will do everything within our power and ability that is not illegal or immoral to make your project scheduled due date.

Your Job-

You have to develop a Realistic Schedule



Clue:

Scheduling your Right of Way Clearance prior to your scheduled Environmental Clearance or the same date as your Environmental Clearance is an indication you have a problem ...or you are going to have.



Consult

with your Right of Way Coordinator about when they will be able to provide you a Right of Way Clearance as you develop the schedule for your project.

You need a Right of Way Clearance no sooner than your Bid Ready Date. (Scheduling a Right of Way Clearance 3 to 6 months ahead of your Bid Ready Date is not necessary!)



Question

Q. Do you know what Trespassing is?





TRESPASSING

If you do not own the land and you are on it without permission – you are

TRESPASSING!

Trespassing:

- 1. To commit an offense.
- 2. To commit an <u>unlawful</u> injury to property, or <u>rights of another</u>. To enter onto another's land wrongfully.
- To infringe on the privacy of another. An intrusion or infringement on another.

(Certain trespasses are *privileged*, such as trespasses to prevent waste, to serve legal service and to use reasonable airspace for flights by aircraft.)



Question

Q. What would happen if during construction the sheriff shows up and stops the work or you have to tell the contractor they have to skip over an area because ADOT does not have the rights to be on a property and they cannot work at that location and will have to come back later?



Answer

Can you say...

"Claim for Damages"

...And how much does mobilization or re-mobilization cost?



Original Contract vs. Change Order





Question

Q. Do Feds participate in delay claim change orders?

NO!

FEDERAL GOVERNMENT DOES NOT PARTICIPATE IN COSTS ASSOCIATED WITH DAMAGE CLAIMS OR BREAKING THE LAW.



DESIGN

SURVEY BRIDGE/STRUCTURES

GEOTECHNICAL DRAINAGE

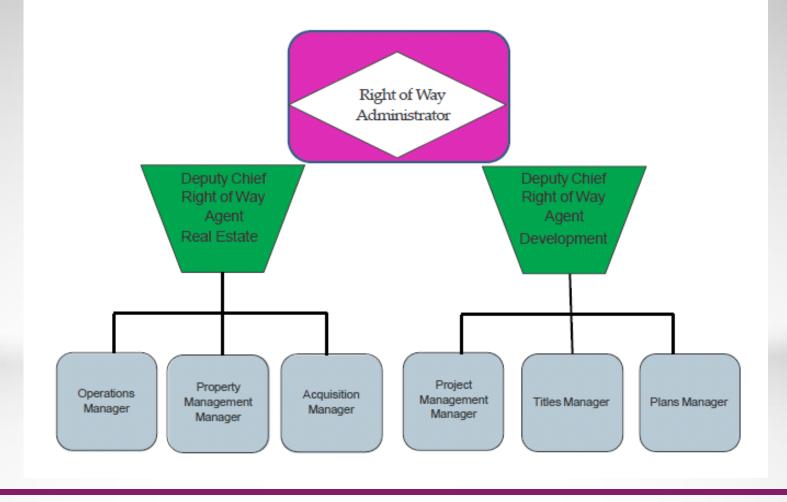
ROADWAY MATERIALS

ROADSIDE PAVEMENT

TRAFFIC LANDSCAPING

SIGNALS/LIGHTING/ITS







RIGHT OF WAY PHONE LIST 9/9/2020

CHIEF GIBSON, PAULA 902-712-8758 602-316-897 MR JOHNSON, ALYSSA 902-712-7142 602-591-826- AA HEL ROCHELLE 902-712-7316 CAMPBELL AMBER IC) 902-712-8766 802-816-826-826-826-826-826-826-826-826-826-82								
AB HILL ROCHELLE 802-712-7316 CAMPBELL AMBER (C) 802-712-8746 EDHARDT III, JOHN 802-712-7390 802-802-7167 MANCILLA, VIDAL (C) 802-712-8746 EDHARDS, DAVE 802-712-8059 MANCILLA, VIDAL (C) 802-712-8736 802-712-8059 LAWLER, MARK (C) 802-712-8059 VELAZOUEZ, MARIA (C) 802-712-8736 802-712-7315 LAWLER, MARK (C) 802-712-8736 802-877-874 (C) 201-802-874 802-712-8736 802-712-7315 802-877-874 (C) 201-802-874 802-712-8736				PGR / CELL			PHONE	PGR / CELL
BLACK, BEN 802-712-7143 (002-200-7169 (P) MANCILLA, VIDAL (C) 802-712-7516				002-310-8497	WIGR			002-301-8264
ECKHARDT III. JOHN 602-712-8706 602-202-875	AA			000 000 0400 (D)				
EDWARDS, DAVE 602-712-803 480-439-89599 UPLAZOUZE, MARIA (C) 602-712-7316 (PERSONANDEZ, LORANDE 602-712-705 (ROZ-712-705) (ROZ-7	-							
HERNANDEZ, LORRAINE 602-712-8058 CAPT-4674 (C) ZULEGER, RHIANNO 602-712-8734 602-712-7768 602-712								
AWILER, MARK (C) 602-712-7169 602-273-74674 (C)				400-430-9339				602-712-7597
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MGR PROST, CARRIE 602-712-7816 602-258-683 MGR ERICKSON, RICHARD 602-712-7885	4946				4950			PGR / CFL I
BECK, LAURA S02-712-4476 AA VACANT GIRONDA, DAVID S02-712-8655 U. Z74ENB06								T OILT OLLL
ABRAHAM, JOYCE 602-712-8696 GRONDA, DAVID 602-712-8655								
L. ZHENZHEN 602-712-7435							602-712-8655	
STOCKER, CAROLYN 602-712-8796 MARIN, MERRISA 602-712-8041								
STOCKER, CAROLYN 602-712-8796 MARIN, MERRISA 602-712-8041		MESSERSCHMIDT, JANE	602-712-4353			MANSFIELD, LINDA (C)	602-712-7710	
WALENCIA, ESTHER 602-712-8768 MCKENZE, STACIE (C) 602-712-7167 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-614-6775 602-712-7835 602-712-7835 602-712-7835 700.000, DON (C) 602-712-8765 700.000, DON (C) 700.000, DON (C) 700.000, DO			602-712-8796					
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SERINYAN, PATRICK (C) 602-712-8768 602-329-495 SOLON, DON (C) 602-712-8703	4947	PROPERTY MGMT - RM 365	PHONE	PGR / CELL		O'CONNELL, TIMOTHY	602-712-7160	602-614-6779
REINMAN, PATRICK (C) 602-712-7058 VARGAS, ELISABETT 602-712-7053 VARGAS, ELISABETT 602-712-7053 VARGAS, ELISABETT 602-712-8763 VARGAS, ELI	MGR	CRAIG, MICHAEL	602-712-6568	602-329-4495			602-712-7933	
MADDEN, KATHEYN S02-712-7836 408-417-7078 WALQUIT, JM (Tucson) S02-712-8763 WALQUIT, JM (Tucson) S02-712-8763 WALQUIT, JM (Tucson) S02-712-8779 WALQUIT, JM (Tucson) S02-712-8453 WENER, CINDY (C) S02-712-8453 WENER, CINDY (C) S02-712-8453 WENER, CINDY (C) S02-712-8453 WENER, CINDY (C) S02-712-8054 WENER, CINDY (C) S02-712-8054 WENER, CINDY (C) S02-712-8054 S02-712-			602-712-8808			TOLMAN, MATT	602-712-4701	
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MAHONEY, TIM S02-712-8814 S02-80-82 WIENER, CIMDY (C) S02-712-8779 MAYNE, PETE S02-712-8738 480-482-9805 RW Fax MACHINES PHONE TO RESERV NINEZ, VANESSA S02-712-7184 S02-203-3377 (P) Acquisition S02-712-3453 S02-712-3453 S02-712-3453 S02-712-3453 S02-712-3453 S02-712-3453 S02-712-32-328 Restricted UR Persev, GREENER, ARTHER (C) S02-712-67702 Operations/Contracts S02-712-3298 Restricted UR Persev Persev S02-712-32-355		KLINE, KATHY	602-712-7938			VERDUGO, HENRI (C)	602-712-8763	
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PERRY_GREENE_ARETHA_502_712_7782		MAYNE, PETE	602-712-8738	480-482-0805		R/W FAX MACHINES	PHONE	TO RESERVE
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VALVERDE, ANNETTE (C) 502-712-786 Project Management 502-712-3051 MGR CHANNER, STEVE 502-712-8891 502-341-9510 Tilles Property Management 502-712-3070 GREAR Property Management Property		PERRY-GREENE, ARETHA	602-712-7022			Operations/Contracts	602-712-3289	Restricted Use
Marg CHAMPR, STEVE 602-712-839 602-814-9510 Foreign type the page of t		RODRIQUEZ, GREG	602-712-7144	480-259-9122		Plans	602-712-3094	
MGR CHANNER, STEVE 602-712-6816 602-341-0510 Tilles ChUBINSKY, PAUL (C) 602-712-675 602-712-675 ChUBINSKY, PAUL (C) 602-712-735 ChuBINSKY, PAUL (C) 602-712-735 ChuBINSKY, PAUL (C) 602-712-736 ChuBINSKY, PAUL (C) 602-712-736 ChuBINSKY, PAUL (C) 602-712-670 ChuBINSKY, PAUL (C) 602-712-760						Project Management		
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MILLANY, CHUCK (C) 602-712-6967 R/W Records Center - RM 303 602-712-8906 4949 PLANS, RM 302 PHONE PGR / CELL OTHER (SEPKRAL NUMBERS PHONE GREEN RM CHANGE CHANG								
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MGR MYES, MICHAEL 602-712-8782 480-356-8586 General Operations (Facilities) 602-712-7888	40.40			DCD / CELL				
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ARIZONA DEPARTMENT OF TRANSPORTATION

Infrastructure Delivery and Operation

RIGHT OF WAY GROUP

Mission:

To acquire and dispose of public / private lands and administer the relocation program in accordance with <u>state laws</u>, <u>rules</u> and <u>federal regulations</u>.



Operations

Accounting

Contracts

Records



Titles

Titles Research

Condemnation

Resolutions and Disposals



Plans

Survey

Plans

Plans Review

Delineation (Legal Descriptions)



Project Management

Project Coordination

Appraisals

Review Appraisals

Local Agency Liaison

Red Letter Program



Acquisitions

Acquisitions

Relocations



Property Management

Rentals

Disposals

Demolition

Water Rights and Wells



Right of Way Property Acquisitions ARE <u>NOT!</u>

Like your Residential Sale where you have

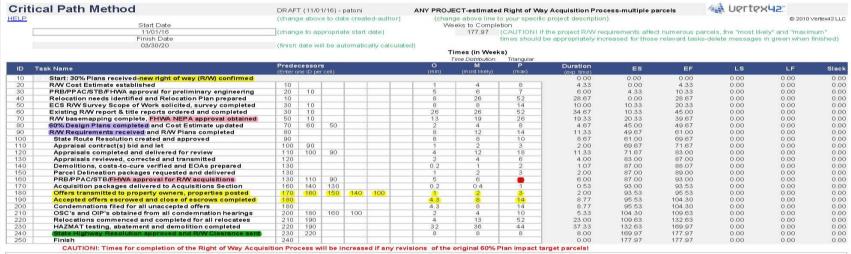
A willing Seller

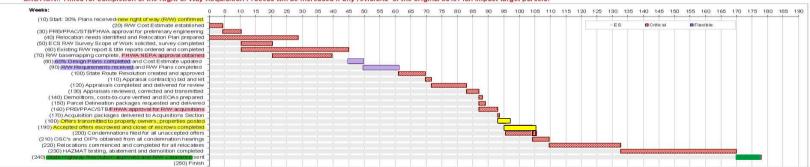
and

A willing Buyer



Right of Way Critical Path











EARLY INVOLVEMENT Preliminary Engineering Activities Right of Way

- ▶ Title Search
- Existing Right of Way Report (ERW)
- R/W Field Survey
- Base Mapping / Right of Way Drawings
- Ownership Records
- ► MAP 21-Property Appraisals prior to completion of the environmental document.

(90 days prior to Environmental Clearance otherwise – Becomes Outdated)

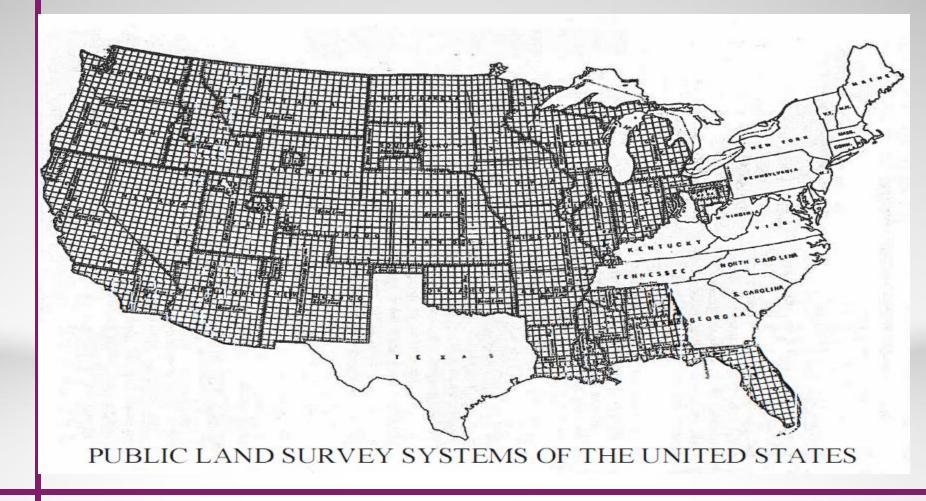


History Trivia

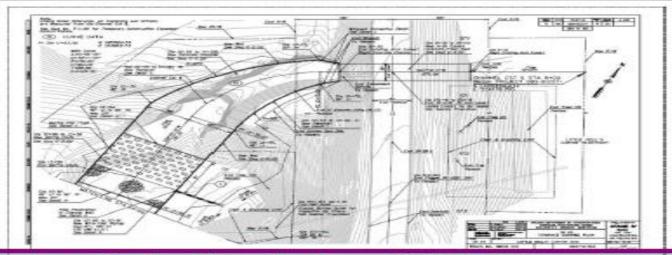
1785 Continental Congress adopted and implemented the United States Rectangular Grid System.

- In use today in 30 of 50 States.
- Excluded from the system are 13 original U.S. colonies and lands that later comprised West Virginia, Kentucky, Tennessee, Hawaii and Texas.
- Florida is the only Atlantic coast state that is included in the rectangular grid system.

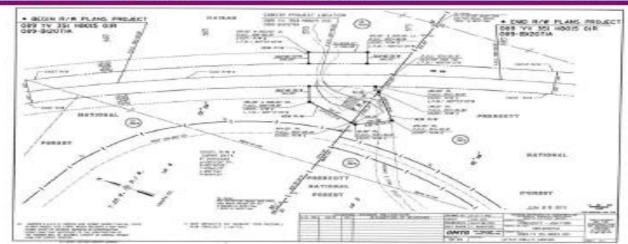






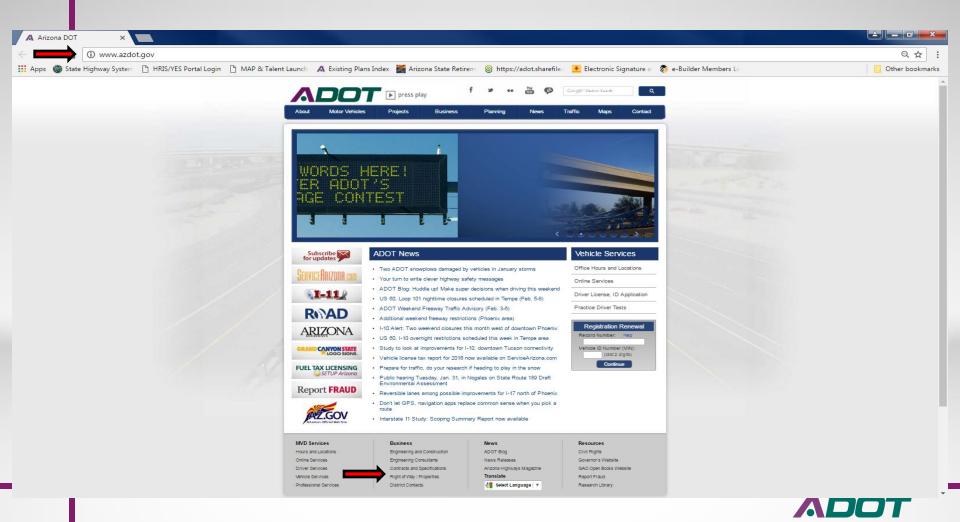


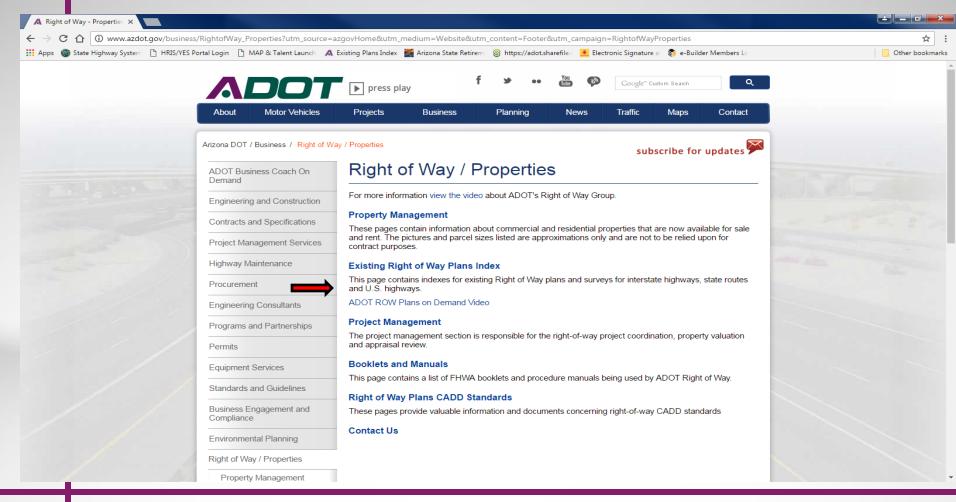
Roadway Design Plan Sheet vs. Right of Way Plan sheet



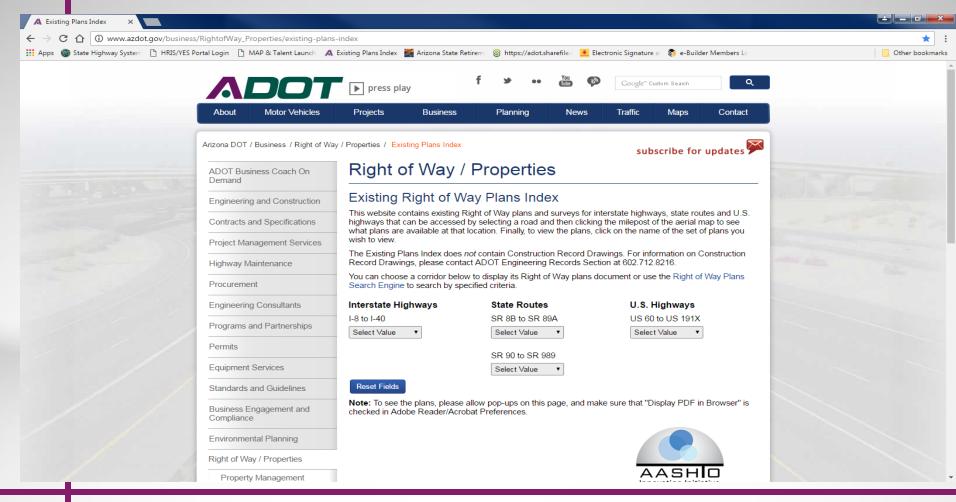
EXISTING Right of Way Plans Index















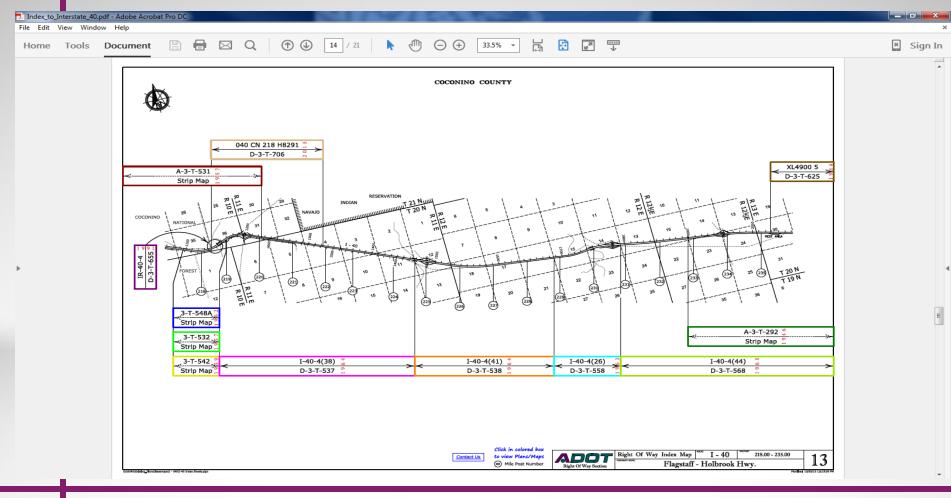
Click on MilePost numbers to view Plans Index sheets

XX Mile Post Numbers I = 40 Mile Post: 0 to 359

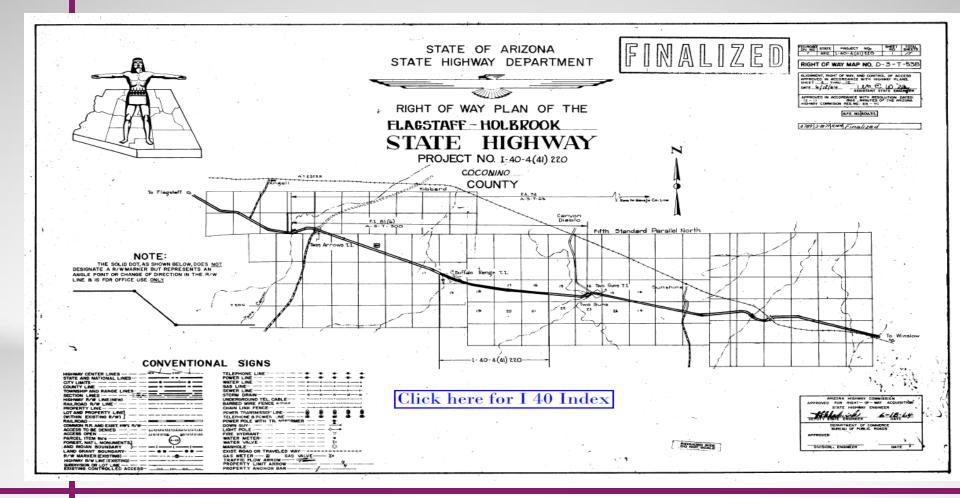




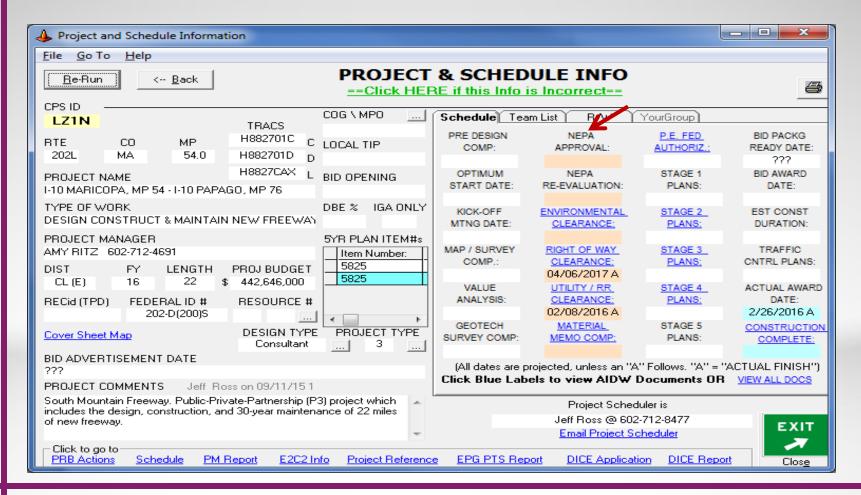




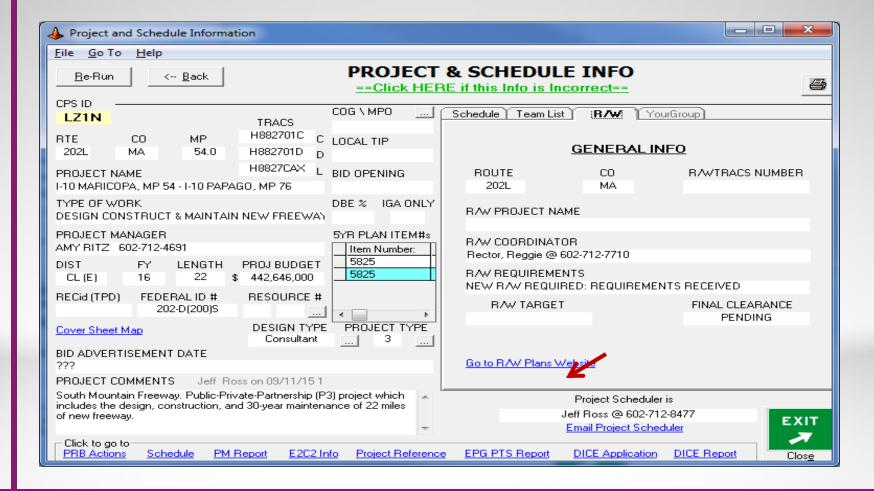














Many Possible Complex Schedule Impacts beyond R/W Control

- Indian Nations
- ► Government Agencies (BIA, BLM, BOR, RR, SLD, FS, CAP...)
- Easement Restriction Releases
- Legal Ownership
- Federal Tax Lien
- Lender Releases
- Out of State/Country Owners

- Home Owner Assoc.
- Hazardous Materials
- ▶ 4(f) properties
- ▶ 6(f) properties
- Conservation Easements
- Historic Properties
- Bankruptcy
- Death
- Relocation
- Condemnation



Many Possible Complex Schedule Impacts beyond R/W Control

- Receipt of Right of Way requirements (from PM)
- Receipt of available funding (FARA submitted by PM)
- Project Design Changes (Under control of PM)

...Your Right-of-Way Clearance is as near as the completion of the last acquisition required for your project!



CLOSE...

Counts Only In:

Hand Grenades

And

Horseshoes



There are **OTHER GOVERNMENT AGENCIES**

With Other Mandates & Requirements for their lands...and it is <u>not</u> Transportation



STATE OF ARIZONA TOTAL LAND AREA

OWNER	ACRES	PERCENT	ACRES	PERCENT
FEDERAL LANDS			51,393,000	70.70
INDIAN RESERVATIONS	19,625,000	27.00		CHARLES TOWN
U S FORESTS	11,392,000	15.67		
BUREAU OF LAND MAN.	12,750,000	17.54		
NAT PARKS AND MON	2,490,000	03.42		
DEPT OF DEFENSE	3,640,000	05.01		
ALL OTHER FED LANDS	1,496,000	02.06		
STATE LANDS			9,637,000	13,26
STATE LAND DEPT	9,594,000	13.20		
\$TATE PARKS	23,000	00.03		: : :
STATE GAME AND FISH	20,000	00.03		
PRIVATE LAND			11,658,000	16.04
TOTAL			72,688,000	100.00
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74				
AZ DEPT OF ECONOMIC PLANNING		*		
AND DEVELOPMENT 1971		2		
HISTORICAL ATLAS OF AZ 1983	6.85 85		+33	JW

NEPA before FHWA Process

Time & \$\$\$\$ 120 Days 0\$ same same deal directly \$

1 Year + & \$\$ directly IGA/JPA directly \$ 75 Days+ & \$\$

BOR / SRP directly land exchange



Condemnation and what it takes to get possession of R/W

- Legal file to Attorney General's Office general rule 6 to 7 weeks to get OSC hearing date. (If near Nov., Dec., Jan., expect to add 1 to 2 more weeks.)
- OSC Hearing Date is set by the Judge. (based upon the Court Calendar)
- More time needed for parties to obtain discovery of facts if taking is contested.
- More time needed for out of state defendant.
- Considerably more time is added to the process when addresses are unknown requiring publication.
- All owners, lien holders, tenants or others involved on a parcel are part of the condemnation process.
- If a bankruptcy, federal tax liens or agency of the federal government are involved, time increases dramatically.
- Service not within proper time OSC Hearing postponed.
- Not Cheap − Court Costs, Attorney Fees, 40% and 50% Factor \$12K Offer vs. Judge required \$100K posting.



Entry Agreement

- Exception not the norm.
- Must first be approved by FHWA.
- ► FHWA requirement Terminate in one year and if not settled required to go to condemnation.
- Owner is entitled to be paid fair rental value.
- Interest paid on the offer amount until the possession is completed.



Conditional Clearance

- Must first be approved by FHWA.
- Does not mean the contractor can go on all properties for construction.
- Usually used to obtain approval to <u>advertise</u> a project because of a demanding project schedule.
- If construction allowed with a Conditional Clearance FHWA requirement is contractor must stay 1,000 feet away from subject property and project is such there is a way for the contractor to accomplish the work without experiencing any delay because of the restriction.



Four FHWA Factors evaluated or addressed before a Conditional Clearance is considered

- 1. How long (by what date) will it likely take to resolve the circumstances that caused the need for the conditional clearance?
- 2. How confident are LPA, ADOT, & FHWA collectively that those circumstances will in fact be resolved by the anticipated date?



Four FHWA Factors evaluated or addressed before a Conditional Clearance is considered

3. What effect will the conditional clearance have on the construction of the project?

a. What would be the anticipated sequence of construction?

b. Can a contractor accomplish meaningful other work without being restricted by the conditional clearance situation?



Four FHWA Factors evaluated or addressed before a Conditional Clearance is considered

4. Are special provisions needed to advise prospective bidders of the conditional clearance – specifically what areas a contractor would need to avoid until after some anticipated clearance date. If so, have these special provisions been drafted and incorporated into the Plans, Specifications and Estimate (PS&E)?



Change in Scope has consequences

Time and Dollar impact depends on when change is initiated and what the change involves.

TCE (Legal Document with Description, Payment and Time Limitation Requirements)

New Permanent Right of Way

Controlled Access

Existing Building Impact

Relocation & Demolition

Vacant Land

City Approved Planned Project







MAIN ENTRY at Southern Avenue

THE SMAN RESIDENTIAL Dumor / Consisper FOTA land planners (fundacage prohibots RESIDES FORWELL & Association registers)



A retitoe



THE SMAR RESPONTING, Owner / Developer POSA land planners, / landscape and viscos RESOCK POWER, & Associates regioners

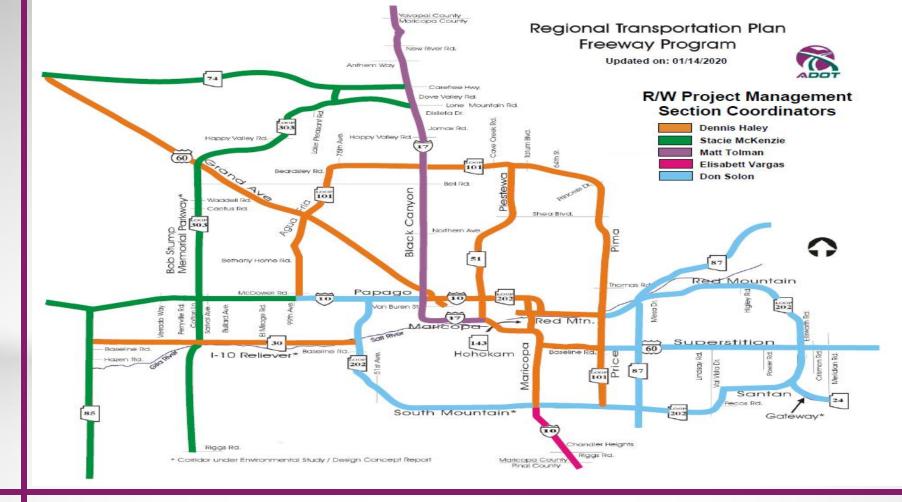
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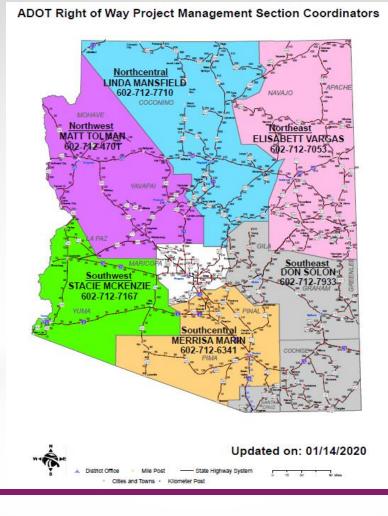
2016 Garretson Case

- ▶ TCE only parcel.
- No physical taking other than TCE.
- ▶ COP offered \$0.00 for loss of access.
- Owner had testimony of damages in excess of \$3,000,000.
- Supreme Court ruling jury returned verdict of \$2,869,360.
- Impact decisions have consequences.

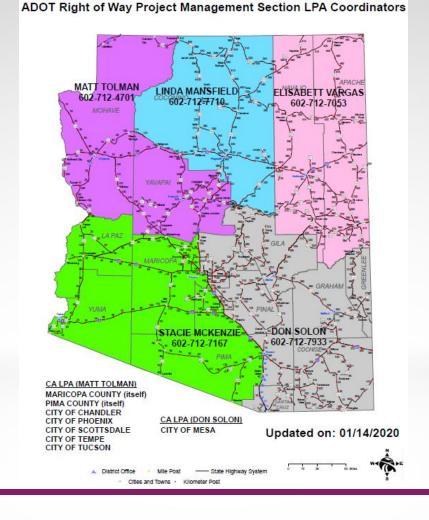








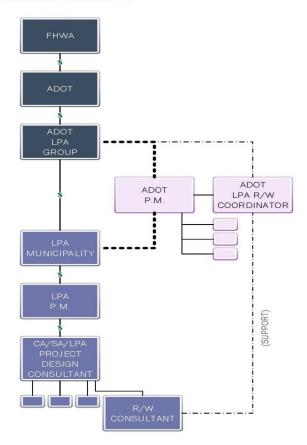






LPA PROGRAM

(FOLLOW THE MONEY/FOCUS ON THE PROCESS)





TEST

Q. 3 THINGS YOU NEED TO KNOW ABOUT RIGHT OF WAY

- 1.Involve R/W right away! (Sooner the better)
- 2.R/W Coordinators phone number
- 3. Acquiring property for public use takes

TIME!



My Job:

Obtain the Right of Way required for your project.

Your Job:

- ▶Keep R/W involved and informed.
- ▶Plan and schedule your project accordingly!
- ▶Provide the Right of Way requirements
- ▶No R/W changes after 60%



Questions

